IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.23333 of 2007

For Approval and Signature:
HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	**NO**
2	To be referred to the Reporter or not ?	**NO**
3	Whether their Lordships wish to see the fair copy of the judgment ?	**NO**
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?	**NO**
5	Whether it is to be circulated to the civil judge ?	**NO**

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PATEL KELVANI MANDAL - Petitioner(s)
Versus
THE STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR YN OZA, SENIOR ADVOCATE, with MS SRUSHTI A THULA for Petitioner(s) : 1,
MR MAULIK NANAVATI, AGP for Respondent(s) : 1,
MR AR THACKER for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA
Date : 04/10/2007
ORAL JUDGMENT

(1) RULE. The petition is taken up for final hearing and disposal today considering the scope of the controversy between the parties.

The learned advocates appearing for the respective parties are directed to waive service.

(2) The facts briefly stated are that : the petitioner-Institution was granted an order of recognition on 15.09.2006 for running a B.Ed. Course from the Academic Year 2006-2007. The petitioner approached the respondent-University for affiliation and allotment of students on 20.09.2006. The respondent-University did not take any decision and hence, the petitioner approached this Court by way of Special Civil Application No.6037 of 2007. On 29.03.2007 following order came to be made by this Court:

"1. The petitioner has prayed for the following reliefs :

"a. The petitioner, therefore, prays that:

i. The Hon'ble Court be pleased to issue a writ or in the nature of of mndamus or in the nature of certiorari or any other writ, order or direction quashing and setting aside the decision of the

respondents to non grant affiliation and allotment of students to the petitioner for starting self finance B.ED College,

ii. Pending admission, hearing and final disposal of the present petition, Your Lordships may be pleased to direct the respondent to grant affiliation and allot students for B.ED. Course for current academic year 2006-2007 on the terms and conditions as may be deemed fit by this Hon'ble Court,

iii. An ex parte ad-interim relief in term of prayer (B) above may kindly be granted.

iv. Pending admission, hearing and final disposal of the present petition, Your Lordships may be pleased to grant provisional affiliation to the petitioner for stating self-finance B.Ed. College,

v. Pass such other and further orders as are deemed proper and just in the facts and circumstances of the case".

2. Vide order dated 15.9.2006 National Council for Teacher Education granted recognition to the petitioner to run B.Ed. Course with approved intake of 100 seats from the session 2006-2007.

The petitioner approached the respondent University on 20.9.2006. However, admittedly the respondent University has not taken any decision as stated by the petitioner.

3. In the aforesaid circumstances, it is apparent that academic year 2006-2007 having almost come to an end it would not be possible for the petitioner to seek affiliation for the said academic year. In the circumstances, it will be open to the petitioner to move the respondent University seeking affiliation for subsequent academic year 2007-2008 onwards on fulfillment of requisite conditions. Needless to state that in the event the petitioner moves such an application for subsequent academic year, the respondent University shall take the necessary decision in accordance with law well within time before academic year 2007-2008 commences.

4. Subject to aforesaid observations the petition stands rejected summarily.

(3) In the meantime, the petitioner approached the respondent-University along with an application accompanied by a demand draft of Rs.75,000/- (Rupees Seventy Five thousand

only) being the affiliation fees. The grievance of the petitioner is that despite an application having been made on 24.02.2007 the respondent-University has not taken any decision.

(4) Heard the learned advocate for the petitioner who has reiterated the aforestated facts and submitted that the respondent-University be directed to grant affiliation and allot students immediately.

(5) Learned advocate for the respondent-University has placed reliance on Paragraph Nos.6, 7 & 8 of the affidavit-in-reply which reads as under:

> “6. I say that the respondent University has not received the copy of the order granting recognition to the petitioner which is produced as Annexure-A at page 9 of the petition. I say that the said order is passed by the Regional Committee of the NCTE in exercise of the powers conferred under section 14(3) (a) of the NCTE Act. I say that the application for

affiliation shows in column No.14 that the procedure for recruitment of the staffs will be made as per the University Rules. I say that under the Regulations made by the NCTE Act, particularly Regulation 7(6) the petitioner institution is required to mention the proposed staff file and on the basis of the same provisional recognition is given and thereafter on production of actual orders of appointment final recognition is granted. I say that the application for affiliation shows that the petitioner has not made recruitment of the staffs as required by NCTE Regulation and still NCTE seems to have granted recognition without verifying the same which is contrary to the regulation of the NCTE. I say that NCTE may be joined as party and they may be called upon to produce the relevant records in order to satisfy that the recognition given is in accordance with the regulations, norms and provisions of the Act.

7. I say that NCTE norms and Regulations are required to be followed by the institutions seeking affiliation. I say that in addition, it is the duty caste upon NCTE to see whether such norms and

regulations are duly followed or not by the institutions applying for affiliation. I say that particularly Norms 4.4 clearly lays down that the teaching staffs are required to be appointed on the basis of the selection committee of the University. In the present case the institution has admittedly not made any appointments as per the Norms 4.4 of the NCTE norms.

8. I say that Regulation 8.10 clearly lays down that the institution cannot admit the students without obtaining affiliation. I say that in the present case the affiliation is still not granted and the powers to grant affiliation is with the State Government and University is only the recommending authority under Section 34 of the Act. Unless and until the affiliation is granted the institution cannot admit the students and the prayers made by the petitioner in the petition for allotment of students cannot be granted. I say that moreover the institution itself has given an undertaking before the University that it will not start the college without prior approval of the State Government, that is to say, without affiliation.”

Elaborating on the aforesaid averments it was submitted that the prayer to grant affiliation and admit the students should not be granted because unless and until the recruitment of staff is made as per the University Rules and proposed staff profile is mentioned as per Regulations; but, in the facts of the case, the application for affiliation on record shows that the petitioner has not made recruitment of the staff as required by NCTE Regulations and despite that NCTE has granted recognition.

(6) After considering the submissions made it is apparent that the stand of the respondent-University is not tenable in law. The position in law is well settled that once NCTE grants unconditional recognition a university can only bring to the notice of NCTE the variance or the discrepancy in facts, and seek withdrawal of recognition as provided by the NCTE Act. It is not open to the respondent-

University, in the circumstances, to plead as to what has been done by NCTE or what has not been done, unless and until the University is in a position to point out that such lapses on the part of NCTE have been brought to the notice of NCTE with a request to withdraw the recognition granted.

(7) However, what is most unfortunate in the present fact situation is the fact that despite an application having been moved by the petitioner on 24.02.2007 the respondent-University has chosen to sit over the application without passing any order or even responding to the application. In Paragraph No.4 of the affidavit-in-reply the respondent-University accepts the fact that in pursuance of the application moved by the petitioner the Vice Chancellor took a decision for appointment of the Local Inspection Committee (LIC) on 26.02.2007. Thereafter, the affidavit goes on to state that no report of the LIC has been received and it is not in the file of the

University and no further action is taken. The Court admires the frankness of the respondent-University in accepting the fact that the report of LIC is not on file, but that fact only requires that the University does some introspection and sets its house in order.

(8) In light of the facts which have come on record and the settled position in law, the petition is required to be allowed. The respondent-University is directed to take all steps and complete the formalities for grant of affiliation forthwith and allot the students immediately. For the purpose of allotment of students the respondent-University shall take the necessary steps within a period of 03 (three) days from today.

(9) The petition is allowed in the aforesaid terms. Rule made absolute. There shall be no order as to costs.

Sd/-
[D.A. MEHTA, J]

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Bhavesh*